

Oklahoma Department of Commerce, ODOC
Additional Terms and Conditions

1.1 Prime Supplier Responsibilities

The anticipated selected Supplier shall be required to assume responsibility for all services offered in its response whether the Bidder proposes to provide the services directly or through a subcontractor. Further, the selected Bidder shall be the sole point of contact for Oklahoma Department of Commerce, ODOC, with regard to all contractual matters.

1.2 Disclosure of Response Contents

In the event of contract award, all documentation produced as part of the Request for Proposal will become the exclusive property of the State and may not be removed by an employee or agent of the Bidder without the written permission of the State. All responses received from Bidders in response to this Request for Proposal will become the property of the State and will not be returned to the Bidder. The State shall have the right to use any or all ideas or adaptations of the ideas presented in any response reviewed in response to this Request for Proposal. Selection or rejection of a response will not affect this right.

1.3 Alternate Responses

A Bidder may submit more than one response. Each alternate response must be separately bound and identified as an alternate response, and its technical and cost sections must be identified and packaged as described. For each alternate response, a Bidder must adhere to the Oklahoma Small and Minority Business requirements set forth.

1.4 Price and Cost

Price and cost shall reflect that the test shall be administered at facilities as determined by the educational entity offering the examination and administered by persons chosen by the educational entity offering the examination. Grading of the examinations and issuance of the certifications as earned by the test taker shall be performed by the Vendor.

1.5 News Releases

News releases pertaining to this project shall not be made without prior written approval of the State. Violation of this section may result in Bidder disqualification.

1.6 Compliance with Law

If selected for award, the Bidder agrees that it will comply with all Federal, State, and local laws applicable to its activities and obligations under the contract. The Bidder shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of Oklahoma or any Department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become in arrears during the term of the contract. Any contract executed as a result of this Request for Proposal shall include all provisions necessary to bring the contract into compliance with state procurement laws.

1.7 Student Data Accessibility, Transparency and Accountability

- a) The supplier's ability to provide services under this Agreement requires STATE to share student data containing confidential personally identifiable information ("PII") from education records maintained by STATE with the supplier. The supplier agrees to comply with all state and federal laws relating to student data and privacy, including the Family Educational Rights and Privacy Act, (20 U.S.C § 1232g; 34 CFR Part 99) ("FERPA") and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013, (70 O.S. § 3-168).
- b) Student data released to the supplier will be limited to data points specifically listed in this Agreement. If the supplier determines that there is a legitimate need to receive or access additional student data/information and that such information is necessary to perform required duties/responsibilities, the supplier shall submit a written request to STATE detailing the information needed and state the purpose of the disclosure. If STATE determines that access is necessary and appropriate, this Agreement may be modified in accordance with request. No information shall be provided until the Agreement is modified to reflect additional/subsequent data disclosures.
- c) The supplier will safeguard the confidentiality and integrity of all data received pursuant to this Agreement, place limitations on its use, and maintain compliance with all applicable privacy laws. The supplier shall establish appropriate administrative, technical and physical safeguards to ensure the security and confidentiality of all student data.

- d) Student information from education records cannot be published in a way that would allow individual students or their parents to be identified. Any reports or published information that is a result of or derived from confidential student data containing PII provided by STATE shall not allow individuals to be directly or indirectly identified and shall contain no student level data. The supplier may use student information from education records to perform contractual duties as required by this Agreement, but any published results must be presented in a manner which protects the privacy and confidentiality of individuals involved. The STATE shall be provided the opportunity to review all results prior to publication.
- e) The supplier shall require all staff to comply with the data security and confidentiality provisions set forth herein. Only those employees that are directly involved in performing tasks outlined herein and who have a legitimate interest in providing services according to the terms of this Agreement shall be entitled to access student data. The supplier shall take steps to maintain the confidentiality of student information from education records. [The supplier must specifically state here the offices or employees within the supplier's or subcontractors' organization who will have access to the student data disclosed by STATE.]
- f) This Agreement does not constitute a release of student-level data for the requestor's discretionary use. Access to (or disclosure of) confidential student information contained from education records pursuant to the terms of this Agreement shall not constitute an assignment of ownership of the information provided. STATE retains all ownership rights to the data transferred pursuant to this Agreement, and the supplier shall not obtain any right, title, or interest in any of the data furnished by STATE.
- g) STATE data may only be used to carry out responsibilities throughout the duration of the projects/task/assignments specified herein. STATE data may only be used to perform the duties specified in this Agreement. Any unauthorized use of the data files beyond the terms specified in the Agreement is not permitted. The supplier shall not use the data for purposes other than the projects/task/assignments identified herein. [The supplier should provide a brief description here of how the supplier will access the information.]
- h) The supplier shall immediately notify the STATE if there is any unauthorized access or breach to the information provided by the STATE and take reasonable steps to mitigate any breach. In the event a breach occurs, the supplier will take reasonable steps and implement corrective procedures to ensure that further breaches do not occur.
- i) The STATE shall be notified immediately if the supplier receives a request for the student data containing PII provided by the STATE. If the supplier becomes legally compelled to disclose any confidential PII (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise, then the supplier shall use all reasonable efforts to provide STATE with prior notice before disclosure so that STATE may seek a protective order or other appropriate remedy to prevent the disclosure. If a protective order or other remedy is not obtained prior to when any legally compelled disclosure is required, the supplier shall only disclose that portion of the confidential PII that it is legally required to disclose.

- j) The supplier may determine that it is necessary to employ a Supplier or subcontractor to fulfill contractual obligations under the Contracts. The supplier shall ensure, by written agreement, that any Supplier or subcontractor employed by the supplier remains in compliance with (FERPA), 20 USC § 1232g; 34 CFR Part 99, and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013, 70 O.S. § 3-168. STATE shall enter into a Data Sharing Agreement with any Supplier or subcontractor employed by the supplier prior to the release of any student data or personally identifiable information.
- k) The STATE will immediately terminate this agreement and this agreement shall not be renewed due to the breach of any of the terms and conditions of the data security and confidentiality provisions set forth herein by the supplier and STATE may revoke any other existing RFP's or contract with the supplier. (OAC 580:16-3-23 and OAC 580:16-9-9).
- l) The STATE may seek monetary, retribute and punitive damages against the supplier for a breach of any of the terms and conditions of the data security and confidentiality provisions set forth herein as allowed by law.
- m) Upon notification of a breach in the terms and conditions of the data security and confidentiality provisions set forth herein, the STATE will not release any additional confidential personally identifiable information ("PII") from education records maintained by STATE to the supplier.
- n) Under FERPA, a parent or an eligible student generally must provide a signed and dated written consent before an educational agency or institution discloses the student's education records or PII contained therein (20 U.S.C. 1232g(b)(1) and (b)(2); 34 CFR § 99.30). FERPA defines "education records," subject to specific exceptions, to mean those records that are: (1) directly related to a student, and (2) maintained by an educational agency or institution or by a party acting for the agency or institution (20 U.S.C. 1232g (a) (4) (A); 34 CFR § 99.3). FERPA requires written consent from the parent or eligible student before disclosing PII from education records, subject to certain exceptions (see 20 U.S.C. 1232g(b), (h), (i), and (j); and 34 CFR § 99.31). The IDEA regulations (34 CFR §§ 300.610 through 300.626) identify the confidentiality requirements that apply to students with disabilities. These regulations protect the PII in education records collected, maintained, or used under Part B of the IDEA. Under 34 CFR § 300.622(a), parental consent must be obtained before PII is disclosed to parties, other than officials of participating agencies, unless the information is contained in education records and one of the FERPA exceptions to consent applies.

Upon completion of the services detailed in this agreement or upon termination of this agreement, the supplier shall immediately destroy all PII that was disclosed by the STATE and provided to the supplier for the purposes detailed in this agreement. Within ten (10) days of destruction, the supplier shall provide written notification to the STATE of the date and method of destruction of these records.